

### **Memorandum in Support of Motion to Compel**

For over three months, Plaintiff Joyce Rowley has tried to secure a health assessment of Asian elephant Ruth and for three months the Defendant City imposed unreasonable restrictions. From requiring prior approval of the Plaintiff's veterinarian's qualifications to now requiring the Plaintiff's veterinarian to confer with the City veterinarian--perhaps in an impromptu deposition without representation, the City has prevented Plaintiff from securing key information in this case.

Upon completing the hearing for a preliminary injunction, the Court did not issue an order but did tell the parties to collaborate on allowing Plaintiff to perform the video of Asian elephant Ruth for her veterinarian. The Court then set the next hearing for March 17, 2022.

With just a month to take the video and send it to the consulting veterinarian, and within an hour of the hearing on February 11, 2022, Plaintiff contacted Defendant and her veterinarian to schedule a call. However, her consultant was reluctant to conference call due to language barriers. The Defendant's counsel first suggested a virtual assessment irregardless of the 12-hour time difference, and then suggested two calls, each a week apart just to discuss the protocol.

Instead, Plaintiff sent a Draft protocol later that afternoon on February 11,

2022 to both her consultant and Defendant's counsel requesting comment. (Exhibit 1, Draft protocol). She asked to schedule the assessment by February 18, 2022, thereby giving her consultant time to write the report and for her to review it relative to the case.

But again the Defendant's counsel refused to make comment. It wasn't clear whether he sent it to the City veterinarian. On February 12, 2022, Plaintiff emailed a copy of the Draft protocol to the City veterinarian, Dr. Erica Lipanovich, and asked what questions she had for Plaintiff's veterinarian. (Exhibit 2, February 12, 2022 Email to Dr. Lipanovich) Defendant's counsel was copied in. Neither replied substantively.

Plaintiff tried again on Monday, February 14, 2022, to get cooperation to schedule the assessment but rather than comments on the protocol or questions for the consultant, she was told she could file this motion. (Exhibit 3, February 14, 2022, Email from Attorney Markey and response.)

As this matter has already been argued, Plaintiff will only add that in this district, the law balances in Plaintiff's favor (Alhabri v. TheBlaze, Inc., 199 F. Supp. 3d 334 - Dist. Court, D. Massachusetts, (2016)). The evidence Plaintiff seeks can not be found elsewhere. Defendant's counsel knows this, and even suggested that he was soon filing a summary judgment during the scheduling for a discovery

hearing.

**RELIEF**

Plaintiff seeks key evidence in this case that can only be obtained by videorecording Asian elephant Ruth in the barn. In the past 45 days, Ruth was only allowed outside for 30 hours. Plaintiff demands to get a clear picture of whether she has deteriorated physically, and if so, how much. While Plaintiff is not a veterinarian, she has selected a consultant with the appropriate expertise to assist her in this case.

Therefore, Plaintiff requests the Court grant this motion to compel Plaintiff's access to the Asian elephant barn at Buttonwood Park Zoo in order to videorecord Asian elephant Ruth as described in the Draft protocol.

Respectfully submitted,  
/s/Joyce Rowley  
Plaintiff pro se  
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Dated: February 14, 2022